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Stanley Consultants, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re
 THE RHODES COMPANIES, LLC,
 Debtor.

Case No. BK-S-09-14814-LBR

Chapter 11

**STANLEY CONSULTANTS, INC.'S
 OBJECTION TO SUFFICIENCY OF
 DISCLOSURE STATEMENT**

Date: October 30, 2009
 Time: 1:30 p.m.

**CREDITOR STANLEY CONSULTANTS,
 INC.'S OBJECTION TO SUFFICIENCY
 OF DISCLOSURE STATEMENT FOR
 THE PLAN OF REORGANIZATION
 PURSUANT TO CHAPTER 11 OF THE
 UNITED STATES BANKRUPTCY CODE
 FOR THE RHODES COMPANIES, LLC,
 ET AL.**

Affects:
☒ All Debtors
☐ Affects the following Debtor(s),
 Apache Framing, LLC
 Batcave, LP
 Bravo, Inc.
 Chalkline, LP
 Elkhorn Partners, a Nevada LP
 Geronimo Plumbing, LLC
 Glynda, LP
 Gung-Ho Concrete, LLC
 Heritage Land Company LLC
 Jackknife, LP
 Overflow, LP
 Parcel 20, LLC
 Pinnacle Grading, LLC
 Rhodes Homes Arizona, LLC
 Rhodes Arizona Properties, LLC
 The Rhodes Companies, LLC
 Rhodes Ranch Golf Country Club, LLC
 Rhodes Ranch General Partnership
 Six Feathers Holdings, LLC
 Tribes Holdings, LLC
 Tick, LP
 Tuscany Golf Country Club, LLC
 Wallboard, LP

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Creditor Stanley Consultants, Inc. ("Stanley") objects as follows to the adequacy of the Disclosure Statement describing the Chapter 11 Plan of Reorganization proposed by The Rhodes Companies, LLC, filed September 25, 2009 (Doc. #501) (the "Disclosure Statement"). Stanley further objects to the Chapter 11 Plan of Reorganization (the "Plan") proposed by the Debtors to the extent that the Plan affects the adequacy of the Disclosure Statement, on the grounds that the Disclosure Statement fails to provide adequate information about the Plan, as required by Section 1125 of Title 11 of the United States Code, 11 U.S.C. § 101, *et. seq.* (the "Bankruptcy Code").

Stanley's objection is made and based upon the following points and authorities, the Declaration of David Frohnen ("Frohen Declaration") and the Certificate(s) of Registration issued by the United States Copyright Office, filed concurrently herewith and in support hereof, the papers and pleadings on file in the above captioned bankruptcy cases and any argument this Court may entertain at the hearing on the adequacy of the Disclosure Statement at the date and time noted above.

I. Background Information

A. Stanley Provided Engineering Services to Debtors Pursuant to Written Contracts

1. Stanley entered into an agreement to provide planning, engineering and surveying services to Rhodes Homes Arizona LLC for various projects in Arizona. *Exhibit 1, Frohnen Declaration. See also Stanley's Proof of Claim 52, with attached Itemized Statement of Accounting and supporting documentation.*

2. Stanley fully performed its obligations pursuant to the terms of the Agreement. *Exhibit 1.*

3. Rhodes Homes Arizona LLC failed to pay Stanley for those services. *Id.*

4. Stanley filed Proof of Claim #52 in the amount of \$3,467,733.00. *See POC #52.*

5. Stanley entered into an agreement with Rhodes Design and Development Corporation ("Rhodes Design") and Rhodes Ranch General Partnership ("Rhodes Ranch"). *Exhibit 2. See also POC #48 and POC #49 with supporting documentation.*

6. Rhodes Design and Rhodes Ranch failed to pay Stanley for those engineering services. *Id. See also Exhibit 1, Frohnen Declaration.*

7. Stanley's Proofs of Claim (*POC* #s 48, 49 and 52) against these Debtors are unsecured trade claims for services provided to Debtors prepetition. *Exhibit 1*.

8. Pursuant to the express terms of the Agreements between the parties, the work performed by Stanley remains Stanley's intellectual property. *Id.*

9. Stanley copyrighted its work product with respect to the work it performed pursuant to the Agreements with Debtors Rhodes Arizona, Rhodes Design and Rhodes Ranch. *Id.* See also *Exhibit 2, Certificate(s) of Registration issued by the United States Copyright Office in accordance with title 17, United States Code.*

10. Pursuant to Article 14, the "Use of Work Product" clause in the Agreements and pursuant to Stanley's Copyrights, Debtors did not obtain any ownership rights in Stanley's work product. *Id.*

11. Stanley's copyrighted work is not transferable without Stanley's written permission. *Id.*

B. Disclosure Statement

1. Debtors filed its Disclosure Statement for the Plan of Reorganization on September 25, 2009. See *Doc. 501*.

2. The Disclosure Statement provides for a "Class C-1 – Trade Claims" that includes "... Unsecured Claims for goods or services provided to the Debtors prepetition, as determined by Debtors, the Creditors' Committee and the First Lien Steering Committee by the hearing on the Disclosure Statement or, if no such agreement can be reached, by the Bankruptcy Court." *Id.*, at 27:9-12.

3. The Disclosure Statements provide for "Substantive Consolidation", seeking an order from the Court to substantively consolidate "all of the Estates in to single consolidated Estate for all purposes associated with confirmation and distribution. . . ." *Id.*, at 29:1-28.

4. The Disclosure Statement also references the "Stanley Engineering Litigation", defining it in the Plan as: "The litigation styled *Rhodes Homes Arizona, LLC v. Stanley Consultants, Inc.* No. CV2006-011358, currently pending in the Superior Court of Arizona, Maricopa County. See *Disclosure Statement*, at 42:25-13. See also *Plan* at 15, 8-9.

1 5. The Disclosure Statement and Plan provides with respect to the Stanley
2 Engineering Litigation:

3 In the event the Stanley Engineering Litigation is resolved either by
4 judgment or settlement in a manner favorable to the Reorganized
5 Debtors and such resolution does not provide for Cash consideration
6 to be received by the Reorganized Debtors and Second Lien
7 Lenders, the Reorganized Debtors and the Second Lien Lenders
8 shall engage in good faith negotiations to ensure that the Second
9 Lien lenders receive consideration equivalent to 50% of the net
10 value of such resolution and to determine the timing of payment of
11 any such consideration. . . .

12 *Disclosure Statement, at 42:7-11.*

13 6. The Plan provides for a "Transfer of Arizona Assets", stating in pertinent part:
14 ". . . the Debtors shall transfer Pravada and the other Arizona Assets set forth on Attachment D to
15 the Mediation Term Sheet, plus the Golden Valley Ranch trade name to the Rhodes Entities free
16 and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code.
17 . . ." *Plan, at 40:26-28; 41:1-6.*

18 **II. Legal Standard**

19 A disclosure statement may not be approved in connection with a proposed plan of
20 reorganization unless it contains "adequate information." 11 U.S.C. § 1125(b). Information
21 contained in a disclosure statement is "adequate" only when it is "of a kind and in sufficient detail,
22 as far as is reasonably practicable in light of the nature and history of the debtor and the condition
23 of the debtor's books and records . . . that would enable a hypothetical reasonable investor of the
24 relevant class to make an informed judgment about the plan. . . ." 11 U.S.C. § 1125(a)(1).

25 Approval of a disclosure statement "involves a fact-specific inquiry into a particular plan
26 to determine whether it possesses 'adequate information' under § 1125." *See e.g., In re*
27 *Inonsphere Clubs, Inc.*, 179 B.R. 24, 29 (S.D.N.Y. 1985). Accordingly, what constitutes
28 "adequate information" is to be "determined by the facts and circumstances of each case in the
discretion of the bankruptcy court." *In re Galerie Des Monnaise of Geneva*, 55 B.R. 253, 259
(Bankr. S.D.N.Y. 1985) (citing the legislative history of § 1125). In the absence of adequate
information, a disclosure statement cannot be approved, and the Debtors cannot solicit acceptances
of the Plan. *See* U.S.C. § 1125(b).

1 **III. ARGUMENT**

2 **A. The Disclosure Statement and Plan do Not Contain Adequate Information Regarding**
 3 **Stanley Consultants, Inc.**

4 The Disclosure Statement in the instant cases fails to provide adequate information that a
 5 hypothetical reasonable creditor, such as Stanley, would need to make an informed judgment
 6 about the Plan. First, the Disclosure Statement and Plan fail to provide sufficient detail regarding
 7 the treatment of Stanley's three Proofs of Claim for the planning, engineering and surveying
 8 services Stanley provided pursuant to written Agreements with: (1) Debtor entities Rhodes
 9 Homes Arizona LLC (Proof of Claim #52 in the amount of \$3,467,733.00) and with (2) Rhodes
 10 Design and Development Corporation and Rhodes Ranch General Partnership (Proofs of Claim
 11 #48 and #49, respectively, in the amount of and \$570,758.00)¹.

12 Stanley filed its three Proofs of Claim on August 5, 2009. The work performed by Stanley
 13 constitutes "Trade Claims" work but appears not to be included under Debtors' "C-1 Trade
 14 Claims" because Debtors identify the estimate amount or value of claims as only \$500,000.00 to
 15 \$1,500,000. *See Disclosure Statement, at 7:20-28.* Given that Stanley's claims alone exceed
 16 \$1,500,000, Debtors have not included Stanley's claims in this classification and neither the
 17 Disclosure Statement or Plan explain how or why Stanley's claims are not being identified. And,
 18 although the Disclosure Statement and Plan reference the "Stanley Engineering Litigation",
 19 Debtors fail to account for Stanley's claims against the Debtors and have failed to file an objection
 20 to Stanley's three Proof of Claims.

21 Second, in their Disclosure Statement Debtors state that of the 453 claims filed, "at least
 22 160 claimants have Filed Claims against the wrong Debtor entity. Therefore, there is confusion
 23 amongst the Creditor body as to which Debtor is the Debtor that is legally obligated on the
 24 Claim." *Disclosure Statement, at 30:19-21.* Although Debtors have objected to a limited number
 25 of claims, Debtors have not filed any where near 160 objections. Additionally, and as of the date
 26 _____

27 ¹Rhodes Design and Development Corporation and Rhodes Ranch General Partnership both
 28 entered into the written agreement with Stanley for the engineering services; hence Stanley's filing
 of the filing of the proofs of claim against each for those at Proofs of Claim 48 and 49.

1 of this filing, Debtors have failed to file any objections to Stanley's three Proofs of Claims.

2 Third, with respect to Stanley's three Proofs of Claim, the Disclosure Statement and Plan
3 fail to provide any information regarding whether Debtors are objecting to Stanley's claims in
4 their entirety or otherwise or whether Debtors believe that Stanley's claims were filed against the
5 wrong Debtor entity. As such, the Disclosure Statement and Plan simply fail to provide Stanley
6 with adequate information for Stanley to make an informed decision about the Plan.

7 Fourth, Stanley is unable to determine from the Disclosure Statement and Plan the basis for
8 classifying Stanley's Proofs of Claim differently than other creditors holding similar claims.
9 There is simply insufficient detail for Stanley to understand how its claims are being classified.
10 Without more information, Stanley cannot make an informed decision regarding the Disclosure
11 Statement and Plan.

12 Fifth, the Plan fails to include exhibits D and E. No explanation is given why these
13 exhibits are referred to but not attached. If the Disclosure Statement and Plan are based upon
14 these exhibits, then Stanley is entitled to review them. Likewise, the reorganization chart attached
15 to Exhibit B of the Plan is illegible and, therefore, fails to provide sufficient information upon
16 which Stanley can make an informed decision on the Disclosure Statement and the Plan.

17 **B. Unauthorized Transfer of Stanley's Intellectual Property**

18 Stanley objects to the Disclosure Statement and Plan as it appears that Debtors are
19 improperly attempting to transfer rights to Stanley's copyrighted intellectual property to the
20 Rhodes Entities and/or Jim Rhodes upon reorganization without paying Stanley for the work and
21 without obtaining Stanley's written permission. *See Plan, at 40-41. See also Exhibit 1, ¶¶21-22.*

22 According to Section E of the Disclosure Statement, Debtors appear to intend to transfer
23 the assets to the Rhodes Entities (what Jim Rhodes will retain after the proposed reorganization)
24 without requiring the Rhodes Entities to pay for the work Stanley performed, contrary to Stanley's
25 copyrights and without Stanley's written permission. It further appears that the transfer will be
26 without compensation to the Reorganized Debtors despite Debtors retaining the burden of the
27 Stanley Engineering Litigation. *See Disclosure Statement at 42:7-13. See also See Plan, at 40-41.*

28 Article 14 of the Agreements with Debtors provides that any work performed by Stanley

1 remains the intellectual property of Stanley. *Exhibit 1, Frohnen Declaration*. Additionally, as
 2 Debtors have not paid Stanley for the work it performed, Debtors are not entitled to use the work
 3 performed by Stanley. *Id.* Furthermore, pursuant to the provisions of the Agreements, Debtors
 4 are prohibited from transferring the right to use the work without Stanley's written permission. *Id.*
 5 Also, pursuant to the terms of the Agreements Debtors entered into and pursuant to 17 U.S.C. 101,
 6 204-205, upon payment for Stanley's work, Debtors only obtained a nontransferable right to use
 7 Stanley's copyrighted intellectual property. *Id.* Given that Debtors have failed to pay for the
 8 services provided by Stanley, Debtors are not entitled to use Stanley's work product.

9 Therefore, to the extent that the Disclosure Statement and Plan propose to the transfer
 10 Stanley's intellectual property and copyrighted material or the intellectual property of Stanley's
 11 subconsultants and/or propose to transfer derivative works based on Stanley's intellectual
 12 property, Stanley objects. Debtors do not own that material, have not paid for the right to use
 13 Stanley's work and, therefore, have no legal right to transfer ownership to any entity let alone
 14 transfer free and clear to entities that seek to take the benefits of the Agreements without the
 15 obligation of paying for Stanley's work.

16 For these reasons, Stanley objects to the Disclosure Statement and Plan.

17 DATED: October 20th, 2009

ANDERSON, McPHARLIN & CONNERS LLP

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19 By: _____

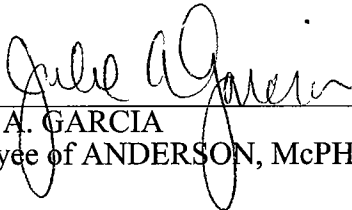
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CERTIFICATE OF SERVICE VIA ELECTRONIC MAIL

I am employed in Clark County. I am over the age of 18 years and not a party to this action. My business address is Anderson, McPharlin & Connors LLP, 777 North Rainbow Boulevard, Suite 145, Las Vegas, Nevada 89107.

I hereby certify that on this 20th day October, 2009, I did serve, via Electronic Mail by the ECF system (a copy of the U.S. Bankruptcy Court's ECF service list is attached), a copy of the above and foregoing **STANLEY CONSULTANTS, INC.'S OBJECTION TO SUFFICIENCY OF DISCLOSURE STATEMENT.**

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of October, 2009.



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